APPEAL NO. 010569

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 5, 2001. With respect to the sole issue before him, the hearing officer determined that the appellant (claimant) was not in the course and scope of his employment when he was injured in a motor vehicle accident on _____. In his appeal, the claimant essentially argues that the hearing officer's determination that he was not injured in the course and scope of his employment on _____, is against the great weight of the evidence. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

An employee whose work involves travel away from the employer's premises is continuously in the course and scope of employment during the trip, except when a distinct departure on a personal errand is shown. Aetna Cas. & Sur. Co. v. Orgon, 721 S.W.2d 572 (Tex. App.-Austin 1986, writ ref'd n.r.e.); Shelton v. Standard Ins. Co., 389 S.W.2d 290 (Tex. 1965). In this instance, the claimant was injured when he was involved in a motor vehicle accident while on a business trip. The hearing officer determined that the claimant was not in the course and scope of his employment at the time because the claimant had made a distinct departure on a personal errand at the time of the accident. There was conflicting evidence on the issue of what the claimant was doing at the time of the accident. The hearing officer was acting within his role as the fact finder and the sole judge of the weight and credibility of the evidence in resolving that conflict against the claimant and in determining that the claimant had departed from the course and scope of his employment when he was injured in a motor vehicle accident on _____. Nothing in our review of the record reveals that the hearing officer's determination that the claimant was engaged in a personal errand at the time of his injury is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists of us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). As such, the hearing officer did not err in determining that the claimant was not in the course and scope of his employment at the time of his injury.

The claimant also asserts error in the hearing officer's having admitted a prior recorded statement of the claimant's in evidence "with clear and flagrant inaccuracies." We cannot agree that the hearing officer abused his discretion in admitting that document. Initially, we note that the claimant testified at the hearing and was provided the opportunity to attempt to refute the alleged inaccuracies. In addition, even if the statement had not been admitted in evidence, the claimant's answers in the statement which were at odds with his testimony at the hearing would have been admissible as impeachment evidence. We perceive no error.

Finally, we find no merit in the claimant's assertion that the hearing officer was biased against him. Our review of the record reveals that the complained-of statements are more in the nature of commentary on the claimant's credibility rather than an indication of bias.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Judge